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## Courts, Political Violence, and Problems with Witness Testimony

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In the 20th century courts, have been created to adjudicate political violence in criminal trials or merely ascribe guilt and responsibility without penalty. Variants of these two approaches have occurred immediately after World War II for leaders of the Axis powers and, more recently, after civil war, insurgency, counterinsurgency, or invasion in countries as disparate as Rwanda, Bosnia, El Salvador, Argentina, and South Africa. There is also a current move to establish a permanent international criminal court to deal with genocide and other crimes against humanity. Unfortunately, one may sow the best of intentions and reap the worst of unintentional effects.

On the macromolecular level it is too easy for the victors of violence to dictate the terms and criteria for what behaviors are deemed appropriate for a court hearing and what people will have the opportunity to have their behavior examined. In fact, besides the victors, others with varied political, social, and economic agendas may have inordinate impact on court procedures and activities. There is also a welter of expectations among population segments, each of which may reject any sense that the court is fair, impartial, or a dispenser of justice-- based either on equality or equity, on procedure, distribution, or substance-- unless and until a preferred denouement occurs.

On the micro-molecular level there is the matter of witness testimony--its reliability and validity. As with psychological assessment techniques, reliability denotes whether the same testimony will be given to the same questions each time they are asked, assuming nothing else has changed to affect the testimony's authenticity. Validity denotes whether the testimony is indeed accurate. Both are colored by many social psychological and cognitive factors. The social psychological ones include how the testimony will affect a potential penalty to oneself or to others. The lives of others who might not even be witnesses or seemingly involved in the court procedure at all. One's own needs for self-esteem. The esteem of others. The impression or image one would like others to have about an act, a thought, a feeling, a life. Threats or rewards voiced by others and ready to be contingently dispensed, often in a primitive manner. Real and imagined slights which might fuel resentments activated to affect testimony.

The cognitive factors include many phenomena subsumed under the psychological functions of attention and memory. Memory is most problematic. As an inferred process, it is not to be thought of as photographic film onto which reality imprints. Instead, people construct their memories based on conscious and unconscious motivations, emotions, expectations, and procedures. And memories are in continual flux. They continue to be constructed moment by moment through interactions with other memories, themselves undergoing continual change. As well, there are additional interactions with newly perceived events and imagined ones, themselves becoming memories and added to the overall cognitive morass. The cognitive sphere interacts as well with other psychological components, especially other emotional and motivational ones--both conscious and unconscious. For example, there are phenomena such as motivated forgetting and emotional contamination of cognitive process. as well, there are even deceptive strategies wherein meditation, biofeedback, hypnotic, and a host of autogenic techniques-- developed alone or in conjunction with others--can help people sincerely express differing testimony at different times and seemingly based on different sets of memories. Hence, people may actually believe different things about themselves at different times.

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From the point of view of an investigator, an attorney, a judge, a jury, or an entire national or international population, the task of deciding what to believe may seem a daunting impediment to Truth, Reconciliation, Justice. However, one can chip away bit by bit at the impediment. For example, what is the best interview procedure for an investigator charged with eliciting reliable and valid testimony? One criterion for "best " would be the percentage of accurate statements furnished by a witness. In this regard, there has been a recent controversy about whether the cognitive interview (CI) leads to more or less accurate recollection than do the structured interview (SI) or standard interview (StI.) The conclusion seems to be that the three may not differ in accuracy, i.e., the percentage of accurate statements,, but the CI may result in more statements, both accurate and inaccurate, than the other two methods.

For an investigator, especially in the early stages of a case, the consequence of more statements presents a significant value-added feature. Even if there is no greater percentage of accurate statements, their greater absolute number facilitates the generation and evaluation of hypotheses. Even the corresponding greater absolute number of inaccurate statements may have projective value in understanding the alleged perpetrators and victims of crimes. (In other words, people may lie or be otherwise incorrect in an infinite amount of ways. How they choose to do so may have significant meaning as well for a well-trained or well-experienced investigator.) Furthermore, even the constructors of show trials need to be concerned with the believability of testimony so that the trial shows what is intended. Thus, seekers of truth and purposeful reinforcers of falsehood both have interests in the psychology of witness testimony and other areas of forensic psychology. (See Crossette, B. (April 7, 1996.) U.N. seeking an accord on a permanent court for war crimes. *The New York Times*, p. 5; Fisher, R. P. (1996.) Misconceptions in design and analysis of research with the cognitive interview. *Psychology*. 96.7.35. (Internet.); Higham, P.A., & Roberts, W. T. (1996.) Measuring recall performance. *Psychology*. 96.7.38. (Internet.)) (Keywords: Witness testimony.)